IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8235 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NURMAHAMMAD AHMEDJI DASTAN

Versus

SPECIAL RECOVERY OFFICER

Appearance:

Mr NK Pahwa for MR PM THAKKAR for Petitioners

NOTICE SERVED for Respondent No. 1

MR VC DESAI for Respondent No. 2

Mr. IM Pandya AGP for Respondent No. 3

MR PM BHATT for Respondent No. 5

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/10/2000

ORAL JUDGEMENT

Learned advocate Mr. Pahwa has appeared for Mr.P.M.Thakkar,learned advocate for the petitioners.

Learned advocate Mr. Desai has appeared for respondent No.2. Learned AGP Mr. Pandya has appeared for respondents no. 3 and 4. In this petition, this court has, while issuing rule, has granted ad interim relief in terms of para 25 (C) on a condition to deposit an amount of Rs.15,000/- before the respondent No.2 on 30.11.1990. Mr. Pahwa learned advocate appearing for the petitioners has submitted that the said amount has been deposited by the petitioners with the respondent no.2 on 5th December, 1990. Learned advocate Mr. Desai appearing for respondent No. 2 not disputed this statement made by Mr.Pahwa.

Today,when the matter was taken up for final hearing, learned advocate Mr. Pahwa has submitted that the petitioners want to withdraw this petition with a view to approach the appropriate authority. He has, however, submitted that the amount which has been deposited by the petitioners before the respondent no.2 on 5th December,1990 in terms of the interim orders passed by this Court on 30.11.1990 should be refunded to the petitioners with some interest thereon. Learned advocate Mr. Desai appearing for respondent No.2 has submitted that the reasonable rate of interest can be fixed by the Court so that the amount can be refunded back to the petitioners and the respondent NO.2 has no objection to pay the amount back to the petitioners with some reasonable interest thereon. He has, however, submitted that the expenses which have been incurred by the second respondent because of this litigation may be taken into account by the court while fixing the rate of interest.

Considering the submissions made by the learned advocates for the parties, the petitioners are permitted to withdraw this petition with a liberty to approach the appropriate authority in respect of the grievances raised in this petition. Respondent No.2 has utilized the amount deposited by the petitioners in terms of the interim orders passed by this Court since 5th December, 1990.Therhefore, taking into consideration this aspect as well as the expenses incurred by the respondent NO.2 for fighting this litigation, respondent NO.2 is directed to refund back the amount of Rs. 15,000/- deposited by the petitioners in compliance of the interim orders passed by this court with interest thereon at the rate of 9% per annum from the date of deposit of such amount i.e. 5th December, 1990 till the date of actual payment within one month from the date of receipt of certified copy of this order. This petition is accordingly disposed of as withdrawn. Rule is discharged. Interim relief granted

earlier shall stand vacated with no order as to costs.

5.10.2000. (H.K. Rathod,J.)

Vyas